

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

LIGHTSTYLES, LTD., a Pennsylvania  
Limited Liability Company, by and  
through its bankruptcy Trustee, LEON  
P. HALLER,

Plaintiff,

vs.

MARVIN LUMBER AND CEDAR  
COMPANY, D/B/A MARVIN  
WINDOWS AND DOORS, a  
Minnesota corporation,

Defendant.

CASE NO. 1:13-cv-01510-WWC

**LIGHTSTYLES, LTD.'S EXCERPTS TO DEPOSITION  
OF SUSAN MARVIN CITED IN OPPOSITION TO  
MARVIN'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's Order entered May 21, 2015 (Doc. No. 181) Plaintiff LightStyles, Ltd. hereby submits as Exhibit A the missing excerpts from the deposition of Susan Marvin that were cited in its Opposition to Marvin Lumber and Cedar Company's Motion for Summary Judgment.

DATED: May 28, 2015

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its Trustee, Leon P. Haller, and for Third  
Party Defendant, Robert Slagle

**EXHIBIT A**

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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LightStyles, Ltd., a Pennsylvania  
limited liability company, by and  
through its bankruptcy Trustee,  
Leon P. Haller,

Plaintiff, No: 1:13-CV-01410-WWC

vs.

Marvin Lumber and Cedar Company,  
d/b/a Marvin Windows and Doors, a  
Minnesota corporation,

Defendant.  
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VIDEOTAPED DEPOSITION OF

SUSAN I. MARVIN

MINNEAPOLIS, MINNESOTA

AUGUST 29, 2014

ATKINSON BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
www.depo.com

REPORTED BY: LISA M. THORSGAARD, RPR

FILE NO: A8077E9

1	BY MR. ROVENS:	12:55:26
2	Q Well, is there a process whereby on some type	12:55:26
3	of periodic basis Marvin gathers information	12:55:30
4	about distributors and receives input from	12:55:32
5	various divisions within the company and	12:55:36
6	evaluates how well a distributor is doing	12:55:39
7	with respect to its distribution agreement	12:55:42
8	with Marvin?	12:55:46
9	MR. WINDLER: Same objections.	12:55:48
10	THE WITNESS: You know, we will	12:55:49
11	periodically sit down with a distributor and	12:55:51
12	discuss what's working well and what's not.	12:55:54
13	And we will get input from our employees and	12:55:56
14	we ask the same of them. We ask them to let	12:56:00
15	us know what we're doing well and what we need	12:56:02
16	to improve on.	12:56:05
17	It's -- it's fairly informal, I think,	12:56:06
18	compared to maybe how some companies might do	12:56:09
19	it, but yes, we have periodic discussions with	12:56:12
20	distribution about the performance and vice	12:56:15
21	versa. I can assure you.	12:56:17
22	BY MR. ROVENS:	12:56:19
23	Q And is there -- are there any writings	12:56:19
24	generated in connection with these formal or	12:56:22
25	informal evaluations, whatever word you're	12:56:25

1	comfortable with?	12:56:27
2	MR. WINDLER: Objection;	12:56:28
3	foundation.	12:56:28
4	THE WITNESS: What do you mean	12:56:30
5	by writings?	12:56:30
6	BY MR. ROVENS:	12:56:32
7	Q For example, is a compilation of information	12:56:33
8	assembled and prepared in written form that's	12:56:37
9	shared with the distributor?	12:56:42
10	MR. WINDLER: Same objection.	12:56:45
11	THE WITNESS: I don't believe	12:56:48
12	we have a standard presentation that we share	12:56:49
13	with the distributor. I -- in terms of	12:56:55
14	writing, I believe I've known our salespeople	12:56:58
15	on occasion sit down and have a discussion	12:57:02
16	with a distributor and take notes of the	12:57:05
17	meeting and provide us input as appropriate,	12:57:08
18	but I don't think there's a -- I could be	12:57:10
19	wrong but I don't think there's a formal	12:57:15
20	report prepared.	12:57:18
21	BY MR. ROVENS:	12:57:20
22	<u>Q As part of the distribution agreement with</u>	<u>12:57:26</u>
23	<u>LightStyles, was LightStyles authorized to</u>	<u>12:57:29</u>
24	<u>use Marvin's trademarks?</u>	<u>12:57:33</u>
25	<u>A LightStyles was certainly authorized to let</u>	<u>12:57:41</u>

<u>1</u>	<u>customers know that they were selling Marvin</u>	<u>12:57:46</u>
<u>2</u>	<u>products. And would they be able to use our</u>	<u>12:57:48</u>
<u>3</u>	<u>logo in the sales process? Yes.</u>	<u>12:57:54</u>
<u>4</u>	<u>Q And that was -- I was asking the latter part</u>	<u>12:57:58</u>
<u>5</u>	<u>of that.</u>	<u>12:57:59</u>
<u>6</u>	<u>A Yes.</u>	<u>12:58:02</u>
<u>7</u>	<u>Q Okay.</u>	<u>12:58:02</u>
<u>8</u>	<u>A Yes, they could do that.</u>	<u>12:58:03</u>
<u>9</u>	<u>Q Okay. And was that true with all Marvin</u>	<u>12:58:04</u>
<u>10</u>	<u>distributors? They were authorized to use</u>	<u>12:58:07</u>
<u>11</u>	<u>Marvin's trademarks; meaning, its logo and --</u>	<u>12:58:08</u>
<u>12</u>	<u>MR. WINDLER: Objection;</u>	<u>12:58:11</u>
<u>13</u>	<u>foundation. Vague as to time frame.</u>	<u>12:58:11</u>
<u>14</u>	<u>BY MR. ROVENS:</u>	<u>12:58:13</u>
<u>15</u>	<u>Q In connection with its distribution of Marvin</u>	<u>12:58:13</u>
<u>16</u>	<u>products?</u>	<u>12:58:16</u>
<u>17</u>	<u>MR. WINDLER: Same objections.</u>	<u>12:58:17</u>
<u>18</u>	<u>THE WITNESS: Yes. A</u>	<u>12:58:18</u>
<u>19</u>	<u>distributor, if they're a Marvin distributor,</u>	<u>12:58:19</u>
<u>20</u>	<u>would have the right to use our logo in their</u>	<u>12:58:21</u>
<u>21</u>	<u>promotional materials, yeah.</u>	<u>12:58:27</u>
<u>22</u>	<u>BY MR. ROVENS:</u>	<u>12:58:33</u>
<u>23</u>	<u>Q And do you know whether Marvin's trademarks</u>	<u>12:58:33</u>
<u>24</u>	<u>and logos, the specific marks and logos that</u>	<u>12:58:43</u>
<u>25</u>	<u>Marvin used were provided to LightStyles so</u>	<u>12:58:45</u>

1           that they could adopt the trademarks for use           12:58:49  
2           on promotional literature or other writings?           12:58:52  
3                       MR. WINDLER: Objection; form,           12:58:56  
4           vague, foundation.           12:58:56  
5                       THE WITNESS: I don't have any           12:59:00  
6           specific information to that, but I would -- I           12:59:01  
7           would guess we would -- as a business           12:59:05  
8           practice, we would make logos available, our           12:59:08  
9           materials available.           12:59:13  
10       BY MR. ROVENS:           12:59:15  
11       Q And was there some department within Marvin           12:59:15  
12           that provided those materials? Marketing or           12:59:18  
13           legal or some other department within Marvin?           12:59:20  
14                       MR. WINDLER: Same objection.           12:59:22  
15                       THE WITNESS: Promotional           12:59:23  
16           materials would be available to distribution           12:59:24  
17           through marketing.           12:59:26  
18       BY MR. ROVENS:           12:59:28  
19       Q And as far as providing logos or trademarks,           12:59:29  
20           were those made available through marketing?           12:59:34  
21       A That is where I would call --           12:59:37  
22                       MR. WINDLER: Same objection.           12:59:39  
23                       THE WITNESS: -- to get one,           12:59:40  
24           yes.           12:59:41  
25



1	<u>BY MR. ROVENS:</u>	12:59:42
2	<u>Q</u> <u>Okay. Were distributors including</u>	12:59:51
3	<u>LightStyles encouraged to use Marvin's logos</u>	12:59:53
4	<u>and trademark on their marketing materials?</u>	12:59:59
5	<u>MR. WINDLER: Objection;</u>	13:00:01
6	<u>foundation. Vague as to distributors.</u>	13:00:01
7	<u>Foundation.</u>	13:00:03
8	<u>THE WITNESS: I don't recall</u>	13:00:09
9	<u>that we encouraged or not the use of our logo</u>	13:00:09
10	<u>by distributors. I, by the same token, think,</u>	13:00:18
11	<u>just from a common sense perspective, it would</u>	13:00:23
12	<u>be pretty hard to promote a brand without</u>	13:00:25
13	<u>using its name.</u>	13:00:29
14	<u>BY MR. ROVENS:</u>	13:00:32
15	<u>Q</u> <u>I'm asking a little more specific question.</u>	13:00:33
16	<u>And I want you to distinguish between just</u>	13:00:35
17	<u>using the name Marvin and using its actual</u>	13:00:39
18	<u>trademarks and logos, which is its branding.</u>	13:00:43
19	<u>A</u> <u>Right.</u>	13:00:46
20	<u>Q</u> <u>You were in marketing for --</u>	13:00:46
21	<u>A</u> <u>Yes.</u>	13:00:47
22	<u>Q</u> <u>-- a period of time?</u>	13:00:47
23	<u>A</u> <u>Yes.</u>	13:00:48
24	<u>Q</u> <u>Okay. So did Marvin view that it was in its</u>	13:00:49
25	<u>interest to have its distributors promote</u>	13:00:53

1	<u>Marvin's name through the use of its logo and</u>	13:00:58
2	<u>trademarks in its marketing materials?</u>	13:01:00
3	<u>MR. WINDLER: Objection;</u>	13:01:03
4	<u>foundation, form.</u>	13:01:03
5	<u>THE WITNESS: Yes. It would be</u>	13:01:12
6	<u>to the advantage of a distributor to use our</u>	13:01:13
7	<u>logo. It would be -- we've got a good</u>	13:01:15
8	<u>reputation, and most of them are very proud to</u>	13:01:19
9	<u>be associated. And they will display our name</u>	13:01:23
10	<u>on their trucks or on their letterhead.</u>	13:01:28
11	<u>Various ones do it differently but most of</u>	13:01:32
12	<u>them like an association.</u>	13:01:34
13	<u>BY MR. ROVENS:</u>	13:01:36
14	<u>Q My question was, would it in Marvin's view be</u>	13:01:36
15	<u>beneficial for the distributors to use</u>	13:01:40
16	<u>Marvin's logos and trademarks for the benefit</u>	13:01:44
17	<u>of Marvin; meaning, getting Marvin's name out</u>	13:01:48
18	<u>in the community and known?</u>	13:01:51
19	<u>MR. WINDLER: Object to the</u>	13:01:55
20	<u>form, foundation.</u>	13:01:55
21	<u>THE WITNESS: I would say that</u>	13:01:58
22	<u>would benefit us. At the distribution level,</u>	13:01:59
23	<u>it's a little less clear than when a dealer</u>	13:02:02
24	<u>uses our logo. In other words, a customer of</u>	13:02:04
25	<u>LightStyles. They often use our logos and our</u>	13:02:07

1	<u>branding on their signage or in their</u>	13:02:12
2	<u>promotion. That's a more direct advantage for</u>	13:02:15
3	<u>us.</u>	13:02:17
4	BY MR. ROVENS:	13:02:17
5	Q Okay.	13:02:18
6	A And them, of course.	13:02:19
7	Q Right. Did Marvin or does Marvin have a	13:02:20
8	co-op advertising program?	13:02:30
9	A Yes.	13:02:32
10	Q Okay. Would you describe that for me?	13:02:33
11	A As is the case with most manufacturers, we set	13:02:38
12	aside a fund usually based on a percent of	13:02:42
13	purchases for a distributor to use.	13:02:45
14	Most of them, like LightStyles, would	13:02:50
15	make the program available to dealers. And	13:02:52
16	so if hypothetically a dealer like, let's	13:02:56
17	say, an ABC Lumber, wanted to advertise that	13:03:01
18	they carried Marvin Windows in ad, they would	13:03:04
19	put our logo in their ad and our name in	13:03:10
20	their ad and might talk about the product.	13:03:13
21	And then they would submit the ad to	13:03:15
22	LightStyles and ultimately to us. And we	13:03:17
23	would pay for 25 percent of it, LightStyles	13:03:22
24	would pay for 25 percent of it, and the	13:03:26
25	dealer would pay for 50 percent.	13:03:27

1	That's a very standard co-op program	13:03:30
2	in our industry. I think virtually all	13:03:33
3	manufacturers have a similar program.	13:03:35
4	Q Okay. And did Marvin have that program in	13:03:39
5	place from 1995 forward?	13:03:42
6	A Yes. Now, if there's been changes, might be	13:03:45
7	subtle changes, I'm not clued in on it, but	13:03:49
8	yes.	13:03:54
9	Q Understood.	13:03:54
10	A Generally.	13:03:54
11	Q That's what I meant.	13:03:55
12	A Yeah.	13:03:56
13	Q All right. And do you know whether	13:03:56
14	LightStyles took advantage of the co-op	13:03:58
15	advertising program that was in place at	13:04:00
16	Marvin?	13:04:02
17	MR. WINDLER: Objection;	13:04:03
18	foundation. Vague as to time frame.	13:04:03
19	THE WITNESS: It's my	13:04:06
20	understanding they did. I wouldn't have	13:04:06
21	firsthand knowledge. I wouldn't have	13:04:08
22	processed claims or anything.	13:04:11
23	BY MR. ROVENS:	13:04:12
24	Q Right. Did Marvin express to LightStyles its	13:04:12
25	expectation that LightStyles would	13:04:20

1	know we can't take that risk. I think we all	14:03:02
2	need to talk. Elliot."	14:03:04
3	Do you see that?	14:03:06
4	A Yes.	14:03:06
5	Q All right. And do you recall having some	14:03:06
6	meeting with Elliot and maybe others about	14:03:08
7	what to do with respect to Mr. Slagle's	14:03:11
8	request about some accommodation as far as	14:03:13
9	payment?	14:03:17
10	A I don't recall.	14:03:18
11	Q Okay. Do you know whether anything was done?	14:03:19
12	MR. WINDLER: Objection; form.	14:03:23
13	Vague.	14:03:23
14	THE WITNESS: I don't. I have	14:03:28
15	a fuzzy memory of Elliot conversing quite	14:03:30
16	frequently with Bob, and I can't remember.	14:03:33
17	I -- I do remember working with him to try to	14:03:38
18	figure out what product was urgent and he	14:03:42
19	needed right away and which product wasn't.	14:03:45
20	And we would try to produce and ship the	14:03:48
21	product that was most critical for him to	14:03:51
22	receive based on his input, if we could.	14:03:55
23	BY MR. ROVENS:	14:03:58
24	Q Okay. But other than that, you don't recall	14:03:59
25	anything else?	14:04:01



1	A	I recall there would be occasion where he'd	14:04:07
2		miss his payment.	14:04:11
3	Q	He meaning LightStyles or --	14:04:12
4	A	LightStyles. He would be late. And I don't	14:04:15
5		know that we were as stringent as we might	14:04:19
6		normally be. I'm trying to remember. But I	14:04:25
7		think we let him go over and take a couple	14:04:29
8		discounts which we would not normally do.	14:04:33
9		We -- we really wanted him to work through	14:04:38
10		this successfully.	14:04:41
11		<u>MR. ROVENS: Let's mark this as</u>	<u>14:04:55</u>
12		<u>379.</u>	<u>14:04:57</u>
13		<u>(Deposition Exhibit No. 379 was marked</u>	<u>14:04:58</u>
14		<u>for identification)</u>	<u>14:04:59</u>
15	<u>BY MR. ROVENS:</u>		<u>14:05:09</u>
16	<u>Q</u>	<u>Have you seen Exhibit 379 before today?</u>	<u>14:05:09</u>
17	<u>A</u>	<u>Yes.</u>	<u>14:05:49</u>
18	<u>Q</u>	<u>Okay. And this is an e-mail dated June 19,</u>	<u>14:05:49</u>
19		<u>2009, from Dawn Kvamme. She was your</u>	<u>14:05:53</u>
20		<u>assistant at the time?</u>	<u>14:05:57</u>
21	<u>A</u>	<u>I don't recall when -- she had been at some</u>	<u>14:05:58</u>
22		<u>point in time. I don't recall when -- when</u>	<u>14:06:01</u>
23		<u>she stopped assisting me and I got a new</u>	<u>14:06:03</u>
24		<u>assistant.</u>	<u>14:06:08</u>
25	<u>Q</u>	<u>All right. But in any event, Dawn is</u>	<u>14:06:08</u>

<u>1</u>	<u>forwarding to you LightStyles sales</u>	<u>14:06:11</u>
<u>2</u>	<u>comparison, correct?</u>	<u>14:06:15</u>
<u>3</u>	<u>A' Correct.</u>	<u>14:06:15</u>
<u>4</u>	<u>Q And this is shortly after the letter from</u>	<u>14:06:16</u>
<u>5</u>	<u>Mr. Slagle that we looked at and</u>	<u>14:06:20</u>
<u>6</u>	<u>Mr. Larson --</u>	<u>14:06:23</u>
<u>7</u>	<u>A Yes.</u>	<u>14:06:24</u>
<u>8</u>	<u>Q -- doing some analysis? Okay.</u>	<u>14:06:24</u>
<u>9</u>	<u>And it says -- she says, "Noticed you</u>	<u>14:06:26</u>
<u>10</u>	<u>have a meeting regarding LightStyles on</u>	<u>14:06:29</u>
<u>11</u>	<u>Monday. Here are their sales just in case</u>	<u>14:06:31</u>
<u>12</u>	<u>you need them."</u>	<u>14:06:33</u>
<u>13</u>	<u>Do you see that?</u>	<u>14:06:34</u>
<u>14</u>	<u>A Yes.</u>	<u>14:06:35</u>
<u>15</u>	<u>Q Okay. And I take it you looked at the sales</u>	<u>14:06:35</u>
<u>16</u>	<u>information when you received it?</u>	<u>14:06:37</u>
<u>17</u>	<u>A I would think so.</u>	<u>14:06:39</u>
<u>18</u>	<u>Q And do you recall the meeting that you had on</u>	<u>14:06:40</u>
<u>19</u>	<u>June 20, 2009?</u>	<u>14:06:45</u>
<u>20</u>	<u>A No.</u>	<u>14:06:47</u>
<u>21</u>	<u>Q So you don't recall having a meeting with</u>	<u>14:06:48</u>
<u>22</u>	<u>Larson or anyone else internally about</u>	<u>14:06:49</u>
<u>23</u>	<u>LightStyles?</u>	<u>14:06:52</u>
<u>24</u>	<u>A I recall meeting at various times to discuss</u>	<u>14:06:57</u>
<u>25</u>	<u>them, but I don't recall a particular meeting.</u>	<u>14:07:01</u>

<u>1</u>	<u>Q</u>	<u>Okay. And in looking at the sales</u>	<u>14:07:03</u>
<u>2</u>		<u>information for LightStyles?</u>	<u>14:07:10</u>
<u>3</u>	<u>A</u>	<u>Yes.</u>	<u>14:07:11</u>
<u>4</u>	<u>Q</u>	<u>You thought that that was a pretty nice chunk</u>	<u>14:07:12</u>
<u>5</u>		<u>of business, correct?</u>	<u>14:07:15</u>
<u>6</u>	<u>A</u>	<u>It is. It's an important account.</u>	<u>14:07:17</u>
<u>7</u>	<u>Q</u>	<u>And you do recall that you had -- you at</u>	<u>14:07:24</u>
<u>8</u>		<u>least had some meeting -- a meeting or some</u>	<u>14:07:27</u>
<u>9</u>		<u>meetings about LightStyles after receiving</u>	<u>14:07:30</u>
<u>10</u>		<u>the June letter, but you just can't recall</u>	<u>14:07:33</u>
<u>11</u>		<u>specifically --</u>	<u>14:07:36</u>
<u>12</u>	<u>A</u>	<u>Correct.</u>	<u>14:07:36</u>
<u>13</u>	<u>Q</u>	<u>-- who was there --</u>	<u>14:07:37</u>
<u>14</u>	<u>A</u>	<u>Correct.</u>	<u>14:07:38</u>
<u>15</u>	<u>Q</u>	<u>-- or what was discussed?</u>	<u>14:07:38</u>
<u>16</u>	<u>A</u>	<u>Correct.</u>	<u>14:07:39</u>
<u>17</u>	<u>Q</u>	<u>Do you recall discussing any options whether</u>	<u>14:07:43</u>
<u>18</u>		<u>it be supporting LightStyles in some fashion</u>	<u>14:07:46</u>
<u>19</u>		<u>or making some type of plans if LightStyles</u>	<u>14:07:51</u>
<u>20</u>		<u>were to go under, what would Marvin do?</u>	<u>14:07:55</u>
<u>21</u>	<u>A</u>	<u>It -- at this point in time 100 percent of our</u>	<u>14:07:59</u>
<u>22</u>		<u>energy was focused on doing what we could to</u>	<u>14:08:05</u>
<u>23</u>		<u>make sure they were successful. They were a</u>	<u>14:08:09</u>
<u>24</u>		<u>significant chunk of business, and it was in</u>	<u>14:08:13</u>
<u>25</u>		<u>our best interest for them to be successful.</u>	<u>14:08:16</u>



1	And we were concerned.	14:08:18
2	And, you know, Duff and I wanted to	14:08:20
3	work with them to the extent it was prudent.	14:08:23
4	We didn't want to be foolish. But we were	14:08:28
5	talking, and I can't remember meetings or who	14:08:34
6	was in them or whatever, but Duff and I were	14:08:37
7	talking on an ongoing basis about doing what	14:08:38
8	we could to help them succeed. This was such	14:08:43
9	an important account to us.	14:08:48
10	Q But you don't recall whether those	14:08:50
11	discussions involved extending credit terms,	14:08:52
12	for example?	14:08:57
13	A Oh, no. And I -- that may have come up in	14:08:58
14	discussion, but that call is made by Elliot.	14:09:03
15	I -- and his team. I don't go there other	14:09:07
16	than to say this is an important account and	14:09:11
17	we need them to be successful.	14:09:14
18	Q So the decision about whether to extend	14:09:17
19	credit terms --	14:09:21
20	A Right.	14:09:22
21	Q -- or allow late payments or schedule	14:09:22
22	payments in some fashion, you're saying that	14:09:28
23	at this time Elliot Larson had the authority	14:09:32
24	to make those decisions?	14:09:35
25	A Totally. He doesn't report to me and never	14:09:37

1	hand we're becoming aware that he's not	15:30:32
2	collecting money from his dealers. They're	15:30:34
3	maybe not capable of paying him.	15:30:37
4	And third, we're out there trying to	15:30:39
5	work with him to assess viable potential	15:30:40
6	dealers. And he knew that. He -- he was,	15:30:46
7	like, help me.	15:30:50
8	Q And when you were out there, you say you were	15:30:51
9	out there working with them --	15:30:54
10	A Our salespeople, yeah.	15:30:55
11	Q What you mean by that is you had salespeople	15:30:56
12	traveling with LightStyles' employees	15:30:59
13	visiting customers and dealers and things of	15:31:01
14	that nature?	15:31:03
15	A I believe --	15:31:04
16	MR. WINDLER: Objection; form.	15:31:05
17	THE WITNESS: We did. And	15:31:06
18	in -- it's -- when we have a sales rep in a	15:31:08
19	market area, that is something they do.	15:31:10
20	That's part of their job. But some of them	15:31:13
21	maybe wouldn't be as sophisticated at	15:31:16
22	assessing a dealer's ability, you know, their	15:31:21
23	financial wherewithal, and in that case, we	15:31:23
24	might -- you know, Duff personally might get	15:31:27
25	involved and say, look at here's some accounts	15:31:30

1	that have potential to be good accounts.	15:31:32
2	So that kind of activity is going on in	15:31:34
3	the sales department, and that's -- that's	15:31:36
4	not -- that's not uncommon. The situation was	15:31:38
5	a little uncommon.	15:31:43
6	BY MR. ROVENS:	15:31:44
7	Q And so this activity as described here	15:31:44
8	obtaining this information and people in the	15:31:47
9	marketplace trying to work with LightStyles	15:31:49
10	was for LightStyles' benefit you're saying?	15:31:51
11	A Yeah. Yeah.	15:31:54
12	<u>Q Okay. And by May of 2011, however, you had</u>	<u>15:31:55</u>
13	<u>had discussions internally about taking over</u>	<u>15:32:00</u>
14	<u>LightStyles' business and taking it dealer</u>	<u>15:32:03</u>
15	<u>direct, correct?</u>	<u>15:32:06</u>
16	<u>A I don't know if we had yet. I don't recall</u>	<u>15:32:10</u>
17	<u>the sequence or the dates, but I do recall</u>	<u>15:32:15</u>
18	<u>becoming increasingly concerned about their</u>	<u>15:32:19</u>
19	<u>ability to weather the recession.</u>	<u>15:32:23</u>
20	<u>It was getting complicated by the fact</u>	<u>15:32:25</u>
21	<u>that we weren't getting audited financials</u>	<u>15:32:27</u>
22	<u>when we asked for them. And we started going</u>	<u>15:32:31</u>
23	<u>what -- we don't know how this is going to</u>	<u>15:32:33</u>
24	<u>play out. Are they going to make it or not?</u>	<u>15:32:35</u>
25	<u>And if they -- if we can help them make it,</u>	<u>15:32:36</u>

1           what are our options here? And so we were           15:32:39  
2           working that. And they're going, what do we       15:32:41  
3           do if they can't? And we were looking at       15:32:43  
4           alternative distribution.                   15:32:48  
5    Q   All right. So to answer my question, do you       15:32:50  
6           know as of May of 2011, whether you had       15:32:53  
7           internally had discussions about taking       15:32:57  
8           LightStyles' business dealer direct?       15:32:58  
9                           MR. WINDLER: Objection; asked       15:33:01  
10          and answered.                           15:33:01  
11                          THE WITNESS: Yeah, I don't       15:33:02  
12          recall when we would have first floated that   15:33:03  
13          as an idea.                           15:33:05  
14    BY MR. ROVENS:                           15:33:07  
15    Q   Okay. And whenever it was that you first       15:33:07  
16          floated that as an idea, meaning taking       15:33:14  
17          LightStyles' business dealer direct, I take   15:33:16  
18          it you contacted Bob Slagle and told him you   15:33:21  
19          were considering taking it dealer direct?   15:33:24  
20    A   No.                           15:33:26  
21    Q   You didn't?                           15:33:26  
22    A   No. We -- we weren't -- no.           15:33:27  
23    Q   Okay.                           15:33:33  
24    A   No. But we did -- and I don't remember when.   15:33:34  
25          Our -- we didn't want to go direct into this   15:33:37

1       market. That wasn't our first option. Our       15:33:40  
2       first option was to see him successful.       15:33:42  
3               Our second was to find another viable       15:33:44  
4       two stepper. In fact, I think we even tried       15:33:46  
5       to connect him with one or maybe they found       15:33:50  
6       him on their own. There were at least two       15:33:54  
7       independents that we tried to facilitate       15:33:59  
8       discussions with Bob.       15:34:04  
9       Q   But in any event, whenever you had your       15:34:06  
10       internal discussions about taking       15:34:08  
11       LightStyles' business dealer direct, you       15:34:09  
12       didn't notify Slagle that's something that       15:34:12  
13       was under discussion at that time, correct?       15:34:15  
14       A   Why are you focused on that --       15:34:19  
15               MR. WINDLER: Object to the       15:34:20  
16       form.       15:34:20  
17               THE WITNESS: -- and not on our       15:34:20  
18       discussions about Reeb or with Cassidy or the       15:34:22  
19       other options and alternatives we were       15:34:25  
20       floating?       15:34:27  
21       BY MR. ROVENS:       15:34:31  
22       Q   You know, after the deposition if you want to       15:34:31  
23       sit down and talk, I can talk to you about       15:34:33  
24       that.       15:34:35  
25       A   Okay.       15:34:35



1	<u>Q</u>	<u>But at this point I just want you to answer</u>	15:34:35
2		<u>my question.</u>	15:34:38
3	<u>A</u>	<u>No.</u>	15:34:39
4	<u>Q</u>	<u>Okay. Let's show you Exhibit 320 --</u>	15:34:41
5	<u>A</u>	<u>We didn't call him up and say we're worried</u>	15:34:43
6		<u>about you going bankrupt either or we're</u>	15:34:46
7		<u>worried about, you know --</u>	15:34:48
8	<u>Q</u>	<u>Right. That was all --</u>	15:34:50
9	<u>A</u>	<u>Had a lot of exploratory discussions.</u>	15:34:51
10	<u>Q</u>	<u>That was all internal discussions within</u>	15:34:55
11		<u>Marvin, correct?</u>	15:34:56
12	<u>A</u>	<u>Right.</u>	15:34:58
13		<u>MR. WINDLER: Objection;</u>	15:34:58
14		<u>foundation.</u>	15:34:58
15	<u>BY MR. ROVENS:</u>		15:34:59
16	<u>Q</u>	<u>And those discussions were kept from</u>	15:34:59
17		<u>Mr. Slagle, correct?</u>	15:35:00
18		<u>MR. WINDLER: Objection; form.</u>	15:35:01
19		<u>Foundation.</u>	15:35:01
20		<u>THE WITNESS: I wouldn't</u>	15:35:03
21		<u>characterize it that way.</u>	15:35:04
22	<u>BY MR. ROVENS:</u>		15:35:05
23	<u>Q</u>	<u>Well, you didn't tell him.</u>	15:35:05
24	<u>A</u>	<u>No.</u>	15:35:06
25	<u>Q</u>	<u>Exhibit 320 previously marked, have you seen</u>	15:35:08

<u>1</u>	<u>Exhibit 320 before today?</u>	<u>15:35:27</u>
<u>2</u>	A <u>Yes.</u>	<u>15:35:29</u>
<u>3</u>	Q <u>And this is the day after Exhibit 319 that we</u>	<u>15:35:30</u>
<u>4</u>	<u>just looked at, correct?</u>	<u>15:35:32</u>
<u>5</u>	A <u>Yes.</u>	<u>15:35:34</u>
<u>6</u>	Q <u>And Duff is writing to you on May 4, 2011.</u>	<u>15:35:36</u>
<u>7</u>	<u>He says, "Susan, among other options we can</u>	<u>15:35:39</u>
<u>8</u>	<u>consider for the mid Atlantic region would be</u>	<u>15:35:42</u>
<u>9</u>	<u>Dealer Direct, Reeb, and as Brian mentioned</u>	<u>15:35:45</u>
<u>10</u>	<u>Hastings."</u>	<u>15:35:48</u>
<u>11</u>	<u>Do you see that?</u>	<u>15:35:48</u>
<u>12</u>	A <u>Yes.</u>	<u>15:35:48</u>
<u>13</u>	Q <u>And is this what you were just asking me</u>	<u>15:35:49</u>
<u>14</u>	<u>to --</u>	<u>15:35:51</u>
<u>15</u>	A <u>Yes.</u>	<u>15:35:51</u>
<u>16</u>	Q <u>-- ask you questions about?</u>	<u>15:35:52</u>
<u>17</u>	A <u>Yes. This was all part of the discussion,</u>	<u>15:35:53</u>
<u>18</u>	<u>yes.</u>	<u>15:35:54</u>
<u>19</u>	Q <u>Okay. So now you'll have your opportunity.</u>	<u>15:35:55</u>
<u>20</u>	A <u>Yes. Thank you.</u>	<u>15:35:56</u>
<u>21</u>	Q <u>You're welcome. All right.</u>	<u>15:35:58</u>
<u>22</u>	<u>So certainly by May 4 of 2011, one of</u>	<u>15:36:00</u>
<u>23</u>	<u>the internal discussions that you were having</u>	<u>15:36:03</u>
<u>24</u>	<u>was taking LightStyles' business dealer</u>	<u>15:36:05</u>
<u>25</u>	<u>direct. True?</u>	<u>15:36:07</u>

1	A	<u>Yes.</u>	15:36:08
2	Q	Okay. And what discussions did you have	15:36:09
3		concerning Reeb?	15:36:13
4	A	Reeb was a two step distributor that has a	15:36:18
5		really strong presence on the East Coast. And	15:36:20
6		we entertained them as a potential customer	15:36:26
7		distributor in that marketplace because they	15:36:30
8		had established relationships with the dealers	15:36:33
9		in that marketplace. In other words, they	15:36:37
10		were already selling products to a lot of	15:36:38
11		customers that LightStyles was. And so for	15:36:40
12		that reason it would have been a natural. And	15:36:43
13		it would have been a better option than going	15:36:47
14		dealer direct.	15:36:52
15	Q	All right. And as of May of 2011, Marvin was	15:36:53
16		comfortable with Reeb's performance, I take	15:36:58
17		it?	15:37:00
18	A	In the Pacific Northwest, I don't know if I'd	15:37:06
19		say comfortable. It wasn't very good. But	15:37:09
20		their base was in the East Coast, and that's	15:37:14
21		where they were really good.	15:37:16
22	Q	Okay. So with respect to transitioning	15:37:17
23		LightStyles' business to another	15:37:20
24		distributor --	15:37:22
25	A	Yes.	15:37:23



1	Q	-- as of May 11 -- I'm sorry -- May 4, 2011,	15:37:23
2		is that something that Marvin would have	15:37:29
3		considered doing?	15:37:32
4	A	Yes.	15:37:32
5	Q	And did you or anyone else in Marvin, to your	15:37:34
6		knowledge, have any discussions with Bob	15:37:37
7		Slagle about transitioning his business to	15:37:39
8		Reeb?	15:37:43
9	A	I don't remember who talked to who, but yes,	15:37:46
10		there were discussions between LightStyles,	15:37:48
11		Marvin, and Reeb.	15:37:51
12	Q	In 2011?	15:37:54
13	A	Yes.	15:37:55
14	Q	And what came of those discussions?	15:37:57
15	A	Okay. My very imperfect memory, and I'm	15:38:03
16		getting everything second or thirdhand, but my	15:38:06
17		memory of it is -- it was characterized to me	15:38:08
18		and very likely by Duff that what Bob was	15:38:12
19		asking for, because, you know, he wanted to	15:38:17
20		sell the business --	15:38:20
21	Q	Right.	15:38:21
22	A	-- was perceived to be totally unrealistic	15:38:21
23		from Reeb's perspective. They were way too	15:38:27
24		far apart.	15:38:30
25		I think I remember Duff saying that	15:38:35

1	A	Correct.	16:04:39
2		MR. WINDLER: Object to form.	16:04:41
3	BY MR. ROVENS:		16:04:41
4	Q	So you didn't work with him to try to revive	16:04:41
5		the distribution agreement or anything like	16:04:43
6		that?	16:04:45
7	A	Oh, no. We'd been doing that for months,	16:04:45
8		trying to keep him going.	16:04:48
9	Q	Right. But what I'm saying is, and just want	16:04:49
10		to make sure we're clear on this point, is	16:04:52
11		that prior to August 15, 2011, Marvin had not	16:04:54
12		notified LightStyles that it intended to	16:04:58
13		terminate, correct?	16:05:02
14	A	That's correct.	16:05:03
15	Q	Okay. And so on August 15, 2011, it	16:05:03
16		terminated effective that day immediately --	16:05:05
17	A	Immediate, yes.	16:05:08
18	Q	-- that minute?	16:05:09
19	A	That's correct.	16:05:09
20	Q	All right. And Marvin took the territory	16:05:10
21		dealer direct, correct?	16:05:19
22	A	Yes.	16:05:21
23	Q	It didn't engage in bringing in another deal	16:05:21
24		or the Reeb deal, the Hastings deal, none of	16:05:25
25		that, right?	16:05:27

1	A	Right.	16:05:28
2	Q	Okay. And --	16:05:28
3	A	There was another one in there, too, I'm	16:05:30
4		pretty sure. And Duff would remember for	16:05:32
5		sure. But I think we got a call from Cassidy.	16:05:34
6	Q	Okay. Well, it wasn't on any of the	16:05:38
7		documents but --	16:05:40
8	A	Yeah.	16:05:41
9	Q	-- I think you're right. I think Duff	16:05:41
10		mentioned something about Cassidy maybe being	16:05:42
11		interested.	16:05:45
12	A	Kevin Cassidy I'd forgotten that.	16:05:45
13	Q	I think that's true. I think Mr. Marshall	16:05:49
14		testified to that.	16:05:51
15	A	Slowly it's coming.	16:05:52
16	Q	But instead of doing -- taking any of those	16:05:52
17		options, Marvin took it dealer direct?	16:05:55
18	A	Correct.	16:05:57
19	Q	<u>And in advance of taking the LightStyles</u>	<u>16:05:57</u>
20		<u>territory dealer direct, did Marvin do any</u>	<u>16:06:00</u>
21		<u>financial analysis of the impact it thought</u>	<u>16:06:02</u>
22		<u>it might have on Marvin's bottom line?</u>	<u>16:06:04</u>
23		<u>MR. WINDLER: Object to the</u>	<u>16:06:08</u>
24		<u>form.</u>	<u>16:06:08</u>
25		<u>THE WITNESS: No. I don't</u>	<u>16:06:12</u>

1       recall that we did. I think we did analysis       16:06:13  
2       on what it would cost to go in there, because       16:06:17  
3       the investment to go into a market like that's       16:06:22  
4       pretty heavy, and this was not a exactly a       16:06:24  
5       time when you want to do it.       16:06:27  
6       BY MR. ROVENS:       16:06:28  
7       Q And what -- when you say the investment to go       16:06:28  
8       into market like that is pretty heavy, what       16:06:31  
9       do you mean by that?       16:06:33  
10      A Oh, you've got to hire outside people, outside       16:06:34  
11      salespeople. You got to hire field service       16:06:37  
12      people. Fortunately, we had people in the       16:06:40  
13      office that a couple weeks earlier we had       16:06:43  
14      started to train. But it takes months to       16:06:46  
15      bring somebody up to speed.       16:06:47  
16               And then you've got, you know, working       16:06:49  
17      with the dealers on all kinds of training and       16:06:53  
18      introductions and meeting new people and       16:06:56  
19      travel. And it's just costly to ramp up a       16:06:58  
20      business.       16:07:02  
21      Q And one of the things in order to try to       16:07:03  
22      mitigate that cost is Marvin decided that it       16:07:05  
23      would hire some former LightStyles people who       16:07:09  
24      already were in the sales areas and knew the       16:07:13  
25      dealers and so on, correct?       16:07:17

1	A	<u>Yeah.</u>	16:07:19
2		<u>MR. WINDLER: Object to form.</u>	16:07:19
3		<u>THE WITNESS: The primary</u>	16:07:21
4		<u>driver for that was Bob asked us if we would</u>	16:07:21
5		<u>consider it.</u>	16:07:23
6	BY MR. ROVENS:		16:07:24
7	Q	<u>Right.</u>	16:07:24
8	A	<u>And we said sure, we'll interview them. But</u>	16:07:24
9		<u>we stipulated we wanted to interview and make</u>	16:07:26
10		<u>certain that we --</u>	16:07:28
11	Q	<u>Yeah. I understand. But part of the way to</u>	16:07:29
12		<u>mitigate that was --</u>	16:07:31
13	A	<u>It was helpful.</u>	16:07:32
14		<u>MR. WINDLER: Object to the</u>	16:07:33
15		<u>form.</u>	16:07:33
16	BY MR. ROVENS:		16:07:34
17	Q	<u>Yeah, to take -- hire some of the -- or</u>	16:07:34
18		<u>not -- I guess they were independent</u>	16:07:36
19		<u>contractors at least originally.</u>	16:07:38
20	A	<u>Yeah.</u>	16:07:40
21	Q	<u>But take them on. So people had already been</u>	16:07:40
22		<u>in the marketplace and dealing with those</u>	16:07:42
23		<u>dealers and so on to try to make this</u>	16:07:44
24		<u>transition smoother, correct?</u>	16:07:46
25		<u>MR. WINDLER: Object to the</u>	16:07:47



1	form.	16:07:48
2	BY MR. ROVENS:	16:07:49
3	Q And then as I understand it -- again, I'm	16:07:49
4	looking at documents. I don't really need to	16:07:51
5	mark these but I just need your testimony --	16:07:53
6	is that this new region was named the	16:07:55
7	mid-Atlantic dealer direct region?	16:07:56
8	A I believe that's right.	16:08:00
9	Q So when I see on documents mid-Atlantic,	16:08:02
10	that's the former LightStyles --	16:08:05
11	A Uh-huh.	16:08:06
12	Q -- territory, correct?	16:08:06
13	A Correct.	16:08:07
14	Q And do you know whether, after taking over	16:08:23
15	the LightStyles territory and taking it	16:08:26
16	dealer direct, has that territory been	16:08:30
17	profitable for Marvin?	16:08:31
18	A I --	16:08:33
19	MR. WINDLER: Object to the	16:08:34
20	form. Foundation.	16:08:34
21	THE WITNESS: We can't do the	16:08:36
22	analysis by customer to determine that yet.	16:08:37
23	BY MR. ROVENS:	16:08:49
24	Q Okay. So you don't know?	16:08:49
25	A No.	16:08:51

**PROOF OF SERVICE**

***LightStyles, LTD. V. Marvin Lumber and Cedar Company***

USDC, Middle District of Pennsylvania

Case No. 1:13-cv-01510-WWC

STATE OF CALIFORNIA                     )  
   )  
COUNTY OF LOS ANGELES             )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1500 Rosecrans Avenue, Ste. 418, Manhattan Beach, CA 90266.

On May 28, 2015, I served the following document(s): **LIGHTSTYLES, LTD.'S EXCERPTS TO DEPOSITION OF SUSAN MARVIN CITED IN OPPOSITION TO MARVIN'S MOTION FOR SUMMARY JUDGMENT** on the interested parties as follows:

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Robert Slagle

( ) **BY U.S. MAIL:** I am “readily familiar” with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I caused the above-referenced document to be mailed to counsel at the addresses listed above.

(X) **CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

( ) **(BY ELECTRONIC MAIL):** I hereby certify that I served the above-described document on the interested parties in this action by attaching an electronic copy of that document to an e-mail addressed to the parties listed herein at their most recent e-mail address of record in this action. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

( ) **BY FACSIMILE:** I caused the above-referenced documents(s) to be transmitted to the noted addressee(s) at the fax number as stated.

Executed on May 28, 2015 at Manhattan Beach, California.

(X) **FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/S/ Tammy Cortez  
Tammy Cortez